IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No.375 of 2000

with

CRIMINAL REVISION APPLICATION Nos.376 and 377 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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Cri. Revi. Application No.375/2000

STATE OF GUJARAT

Versus

ELESHBHAI MANUBHAI PATEL

with

Cri. Revi. Application No.376/2000

STATE OF GUJARAT

Versus

SHAILESHBHAI CHANDRAKANTBHAI PATEL

with

Cri. Revi. Application No.377/2000

STATE OF GUJARAT

Versus

VINODBHAI NANUBHAI PATEL

Appearance:

1. Criminal Revision Application No. 375 of 2000
MR BY MANKAD, Ld. APP for Petitioner No. 1
MR DK DESAI for Respondent No. 1

2. Criminal Revision Application No. 376 of 2000
MR BY MANKAD, Ld. APP for Petitioner No. 1
MR DK DESAI for Respondent No. 1

3. Criminal Revision Application No. 377 of 2000
MR BY MANKAD, Ld. APP for Petitioner No. 1
MR DK DESAI for Respondent No. 1

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 18/09/2001

COMMON ORAL JUDGEMENT

1. In all the above three Revision Applications, same question of law has arisen to be decided and, therefore, these three applications were heard together and being decided by this common judgement.

2. In Criminal Revision Application No.375 of 2000, against respondent, Eleshbhai Manubhai Patel, before the Petlad Police Station, a crime came to be registered on 12-12-1997 for the offences punishable under Section 85(1)(3) and under Section 66(1)(b) of the Bombay Prohibition Act, while in Criminal Revision Application No.376 of 2000, before the Petlad Police Station, a crime came to be registered on 12-12-1997 against the respondent, Shaileshbhai Chandrakantbhai Patel for the offences punishable under Section 85(1)(3) and 66(1)(b) of the Bombay Prohibition Act, while in Criminal Revision Application No.377 of 2000, a crime came to be registered against the respondent, Vinodbhai Nanubhai Patel, before the Petlad Police Station on 12-12-1997 for the offences punishable under Section 85(1)(3) and 66(1)(b) of the Bombay Prohibition Act.

3. The Record and Proceedings reveals that against all the three accused, chargesheet for the offences as mentioned above, came to be filed separately before the learned Judicial Magistrate First Class at Petlad on 6-10-1998 against each applicant and the cases were

registered as Criminal Case No.1945/1998 against Eleshbhai Manubhai Patel, respondent in Criminal Revision Application No.375/2000; No.1946/1998 against Shaileshbhai Chandrakantbhai Patel, respondent in Criminal Revision Application No.376/2000 and No.1947/1998 against Vinodbhai Nanubhai Patel, respondent in Criminal Revision Application No.377/2000.

4. In each of the above three cases, accused filed applications under Section 468 before the learned Magistrate, for discharging them on the ground that the cases were registered on 12-12-1997 and chargesheet of same was submitted to the Court by the Police on 6-10-1998. It was contended that the chargesheet was filed against the accused after the period of six months was over from the date of offence i.e. 12-12-1997. It was also contended that as per the provisions of Sections 468 and 469 of Cr.P.C., the Police was required to file the chargesheet within six months from the date of offence and, therefore, there is a bar of limitation under Section 468 of the Cr.P.C., for further proceedings against the accused. Against the above applications, in each case, the learned Magistrate passed order on 1-6-2000 separately, observing that the chargesheet has been filed by the Police against the accused after a period of six months from the date of offence and late by three months and 25 days and according to the learned Magistrate, this was beyond the period of limitation of six months as prescribed by Sections 468 and 469 of Cr. P.C. Therefore, there was a bar, in the opinion of the learned Magistrate for taking congnizance as per Section 468 of the Cr.P.C., and hence the applications of the accused in each of the cases were granted and each accused in each case was discharged under Section 239 of the Cr.P.C.

5. Being aggrieved by the above said three orders passed by the learned Judicial Magistrate First Class at Petlad on 1-6-2000 in each of the three Criminal Cases mentioned above, the State has filed the present three Revision Applications.

6. The learned APP, Mr.B.Y.Mankad appeared on behalf of the State applicant and the learned Advocate, Mr.D.K.Desai appeared on behalf of the respondents-original accused in all the three matters.

7. The learned APP, Mr.Mankad has drawn my attention to Section 468 of the Cr. P.C., wherein it is specifically provided that the period of limitation shall be one year, if the offence is punishable with

imprisonment for a term not exceeding one year. The learned APP has submitted that within that period the chargesheet has been filed and the same has been registered by the learned Magistrate and the learned Magistrate has ordered to issue summons to the accused on 6-10-1998. It was contended that the offence was committed on 12-12-1997, and thereafter the chargesheet came to be filed on 6-10-1998 and when the learned Magistrate ordered to issue summons on the same day, the learned Magistrate is said to have taken cognizance within one year and hence each case was within the period of limitation.

8. On the other hand, the learned Advocate, Mr.Desai for the respondents-original accused in each matter has drawn my attention to provisions of Sections 468 and 469 of Cr.P.C. The learned Advocate, while going through the provisions, admitted that the limitation as prescribed would be applicable as per Section 468(2) i.e. one year, meaning thereby that for the offence under Section 66(1)(b) of the Bombay Prohibition Act for a first offence, punishment of six months is provided for, while for the offence under Section 85(1)(3) of the Bombay Prohibition Act, for a first offence, punishment of imprisonment for a term which may extend to one month is provided for and hence it was admitted that in the present case, Cr.P.C. 468(2) would be applicable and the limitation for taking cognizance is one year from the date of offence in this case. Mr.Desai has cited an authority of Apex Court in the matter of "Anil Saran Vs. State of Bihar and Another", reported in 1995 SC Cases (Criminal), 1051, wherein in Para 5, the Supreme Court was pleased to observe that:

> "But it is now settled law that the court takes cognizance of the offence and not the offender. As soon as the Magistrate applies his judicial mind to the offence stated in the complaint or the police report etc. cognizance is said to be taken. Cognizance of the offence takes place when the Magistrate takes judicial notice of the offence. Whether the Magistrate has taken cognizance of offence on a complaint or on a police report or upon information of a person other than the police officer, depends upon further action taken pursuant thereto and the attending circumstances of the particular case including the mode in which case is sought to be dealt with or the nature of the action taken by the Magistrate."

Supreme Court has referred Section 190 of the Cr.P.C., which empowers the Magistrate to take cognizance. Relying on this, it was submitted that merely filing of the chargesheet could not be said that the Magistrate had taken cognizance as per Section 190 and, therefore, mere filing of the chargesheet by the Police in the Court of JMFC, Petlad on 6-10-1998 would not mean that the Magistrate has taken cognizance of the offence on that day. It was urged that taking of the cognizance of the offence in this case is barred.

9. Having gone through the record and proceedings of the cases and considering the rival contention, surprising fact which surfaces is that, the learned Magistrate allowed the applications of the accused under the assumption that the period of limitation for taking cognizance for such offence was six months. The order of learned Magistrate does not disclose from where he found the provision that the cognizance was required to be taken within six months from the date of the offence in these cases. This fact itself is indicative of non-application of mind on the part of the learned Magistrate to the facts of the case and law as well. Aforesaid Section 66(1)(b) of the Bombay Prohibition Act, 1949 specifically provides that the punishment for the offence would be, for a first offence, an imprisonment for term which may extend to six months and fine of Rs.500/-. Likewise, Section 85(1)(3) of the same Act provides that, on conviction, the accused shall be punished for a first offence, with imprisonment for a term which may extend to one month and with fine which may extend to Rs.200/-. Now, Section 468(2)(b) clearly provides that the period of limitations shall be one year, if the offence is punishable with imprisonment for term not exceeding one year. It appears that the learned Magistrate has not taken a little care to go through bare reading of the important provisions of the law applicable to the facts of the case. Therefore, it is clear that by virtue of Section 468(2)(b), the learned Magistrate is to take the cognizance of an offence as mentioned above i.e. offence punishable under Section 66(1)(b) and Section 85(1)(3) of the Bombay Provision Act, within one year from the date of the offence, meaning thereby the learned Magistrate would not be empowered to take the cognizance of the said offence after 12th of December, 1998 because offence was committed on 12-12-1997. True it is, that mere filing or transmitting the chargesheet in the Court may not amount to taking cognizance by the Court as per Section 190(2), but when the Police files chargesheet and the same is registered by the Court and placed before the learned Magistrate and the Magistrate acts upon filing of

the chargesheet, it will undoubtedly mean that the Magistrate is taking cognizance of the offences. On perusal of the record, it is clear that on filing of the chargesheet, the learned Magistrate took the chargesheet into consideration and on token of that consideration, he passed an order to issue summons on the accused on 6-10-1998. This fact amply indicates that the Court has taken cognizance of the said offences as per Section 468(2)(b) of the Cr.P.C. Nothing more is required to be done by the learned Magistrate for taking cognizance than taking into consideration the Police report filed by the Police. The order issuing summons to the accused itself denotes that after taking cognizance of the offence as was disclosed from the Police report, the accused were summoned by the Police before the Magistrate and, therefore, it must be held that the Court took the cognizance on 6-10-1998 for the offences registered against each of the accused and in each of the above three cases and so considering that since the date of offence was 12-12-1997 and since the Court has taken cognizance on 6-10-1998, the learned Magistrate has taken cognizance within one year of the offence as per Section 468(2) of the Cr.P.C. Order impugned in each case by the learned Magistrate is not only erroneous, but perverse also, because there is a misreading of the express provisions of law.

10. In this view of the matter, in all the above mentioned three Criminal Cases i.e. Criminal Case No.1945 of 1998, Criminal Case No.1946 of 1998, and Criminal Case No.1947 of 1998, the order passed by the learned Judicial Magistrate First Class, Petlad, on 1-6-2000, which are impugned in these revision applications are set aside and the applications of the present respondents stand rejected for the above reasons. All these three Criminal Revi. Applications mentioned above are allowed and rule is made absolute. R and P of the above three criminal cases be immediately returned to the learned Judicial Magistrate First Class, Petlad by the Office to proceed with the cases according to law.

18-9-2001 (J.R.Vora, J.)

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